No. 89-529

Supreme Court U.S.
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In The

Supreme Court of the United States

FRANK A. JAKOBOWSKI, ESQUIRE,

Petitioner,

vs.

BARRY A. DUBIN,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether this Court should grant a Petition for a Writ of Certiorari to determine if, in 1984, a bankruptcy court, prior to the enactment of the Bankruptcy Amendment and Federal Judgeship Act of 1984, Pub. L. No. 98-353 (98 Stat. 333), was empowered to hold a person in contempt for a violation of the automatic stay provision of the Bankruptcy Code, 11 U.S.C. § 362.

LIST OF PARTIES TO THE PROCEEDING

Petitioner is Frank A. Jakobowski, Esquire.

Respondent is Barry A. Dubin.

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

RESPONDENT'S BRIEF IN OPPOSITION

The respondent, Barry A. Dubin, respectfully requests that this Court deny the Petition for a Writ of Certiorari seeking review of the unpublished opinion in this case rendered June 29, 1989 by the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The Opinion and Order of the United States District Court

for the Eastern District of Pennsylvania reproduced at Appendix 8a to 15a of the Petition for a Writ of Certiorari to the United States Court of Appeals to the Third Circuit is incomplete. The complete Opinion and Order is reproduced at Appendix A.

STATUTES INVOLVED

11 U.S.C. § 362 (as enacted in 1978), 11 U.S.C. § 362 (as amended in 1984), Bankruptcy Rule 9020 (as adopted in 1983) and Bankruptcy Rule 9020 (as amended in 1987) are reproduced at Appendix B.

STATEMENT OF THE CASE

In February of 1983, Robert A. Wolk, t/a Wolk Dental Labs ("Wolk"), obtained a judgment against Barry A. Dubin ("Dubin or "Debtor"). This judgment remained outstanding when, on April 20, 1983, Dubin filed a voluntary petition pursuant to the provisions of Chapter 11 of the Bankruptcy Code (the "Code"), 11 U.S.C. § 101, *et seq*. Shortly thereafter, Dubin's Chapter 11 case was voluntarily converted to a Chapter 7 liquidation case.

Pursuant to the provisions of the Code, Dubin duly filed a Schedule of Assets and Liabilities, and a Statement of Affairs, both of which are required to be filed. Amendments were subsequently filed. In response to a question on the Statement of Affairs dealing with the status of any lawsuits against the Debtor, Dubin duly listed Wolk's judgment. However, the Schedule of Assets and Liabilities inadvertently omitted this judgment as a liability against Dubin's estate.

On (or about) January 23, 1984, Frank Jakobowski, Esquire ("Jakobowski"), on behalf of his client, Wolk, caused a Writ of Execution (the "Writ") to be issued in an effort to collect upon Wolk's judgment. As a result of the issuance of this Writ,

Dubin's bank account at Girard Bank was attached and "frozen".

On January 30, 1984, Dubin's counsel, Myron A. Bloom, Esquire ("Bloom") notified Jakobowski orally and in writing of the pendency of the bankruptcy case, and requested that steps be taken to dissolve the Writ. Bloom also delivered to Jakobowski a copy of the voluntary petition that was filed on April 20, 1983. That petition indicated that an Order for Relief under the Bankruptcy Code had been entered by former Chief Bankruptcy Judge Emil F. Goldhaber on April 20, 1983.

Jakobowski refused to dissolve the Writ. As a result, on February 3, 1984, Dubin, by his counsel, filed a Motion for Contempt (the "Motion") against Wolk in the United States Bankruptcy Court for the Eastern District of Pennsylvania. The Motion was scheduled for a hearing on February 6, 1984, and was continued to February 27, 1984. On February 17, 1984, Bloom wrote to Jakobowski, advising him of the pending Motion and again requesting that Jakobowski dissolve the Writ. Wolk appeared at the February 27, 1984 hearing, without counsel. At that hearing, the Bankruptcy Court entered an Order directing that Wolk be held in contempt for every day that the Writ was not dissolved beyond March 2, 1984. The court also ordered Wok to direct his counsel, Jakobowski, to dissolve the Writ.

In a letter dated March 1, 1984, addressed to Judge Goldhaber, Wolk informed the court that despite Wolk's request, Jakobowski refused to dissolve the Writ. Accordingly, on March 23, 1984, Bloom was compelled to file a Property Exemption Claim on behalf of Dubin with the Office of the Sheriff of Philadelphia County, so as to prevent Jakobowski from scheduling a Sheriff's Sale of Dubin's assets — assets of the Debtor's Chapter 7 Estate. Dubin then filed a Complaint for Injunctive and Other Relief against Jakobowski (the "Complaint"). Thereafter, on March 30, 1984, Dubin filed a Motion for Preliminary Injunction (the

"Injunction Motion") against Jakobowski, seeking to have the Writ immediately dissolved. The Bankruptcy Court scheduled a hearing on the merits of the Injunction Motion for April 26, 1984. Dubin appeared at the designated time and place for hearing, but Jakobowski did not. After the presentation of testimony, the Bankruptcy Court entered an Order directing Jakobowski to immediately take action to dissolve the Writ. Rather than do so, on May 4, 1984, Jakobowski filed a Notice of Appeal and a Motion for a Stay Pending Appeal. Jakobowski also filed a Motion to Dismiss the Complaint (the "Dismissal Motion") despite his testimony (given at a subsequent hearing) that he earlier had stated his intention not to oppose any action taken by Bloom to obtain a court order allowing the Writ to be dissolved (the Dismissal Motion was denied).

On May 16, 1984, Judge Goldhaber granted Jakobowski's Motion for Stay Pending Appeal on the condition that Jakobowski file a $10,000 supersedeas bond with a corporate surety. On May 29, 1984, Jakobowski filed, although not timely, the supersedeas bond.

On June 6, 1984, without obtaining any relief from the automatic stay provisions of the Code, 11 U.S.C. § 362, or any other form of order permitting him to do so, and by now fully aware of his obligation (and the restraints imposed upon him by the Code's automatic stay provisions), Jakobowski filed a Petition for Supplementary Relief in Aid of Execution on the Writ in the Philadelphia Court of Common Pleas (the "Petition"). Bloom was compelled to answer the Petition to protect Dubin's interests. That Petition was subsequently denied by the Honorable A. DiBona of the Philadelphia Court of Common Pleas.

In a Memorandum and Order dated February 8, 1985, Chief Judge John P. Fullam of the United States District Court for the Eastern District of Pennsylvania affirmed Judge Goldhaber's

Order of April 26, 1984, that required Jakobowski to dissolve the Writ. From the period of February 8, 1985, to May 16, 1985, Jakobowski made no effort to inform Dubin or Bloom of the status of the Writ. However, on February 26, 1985, over two weeks after the entry of Judge Fullam's Order, Jakobowski filed a Praecipe to dissolve the Writ. On April 26, 1985, unaware that the Writ had been dissolved, and after learning that the Dubin bank account was still 'frozen", Bloom wrote to Judge Goldhaber requesting him to enter an Order dissolving the Writ. In the letter, Bloom informed the Bankruptcy Court of the fact that the Dubin bank account was still "frozen", and sent a copy of the letter to Jakobowski asking him to correct any misstatements made in the letter. Jakobowski, though knowing that the Writ had been dissolved, notified neither Bloom nor the Bankruptcy Court of that fact; as a result, on June 17, 1985, Judge Goldhaber signed an Order declaring the Writ null and void.

On September 29, 1986, Jakobowski filed his second Motion to Dismiss the Complaint (the "Second Motion"). The Second Motion was briefed, argued by the parties, and on January 9, 1987, Bankruptcy Judge Bruce I. Fox (Judge Goldhaber having retired) entered an order denying the Second Motion. Subsequently, an Answer to the Complaint was duly filed. Jakobowski, by that time, had the benefit of Judge Fullam's Order directing Jakobowski to dissolve the Writ. Clearly, that Order did not deter Jakobowski from expanding this litigation far out of proportion.

On April 1, 1987, a hearing on the merits of the Complaint was held before Judge Fox. At the close of testimony on April 1, 1987, Judge Fox continued the hearing until April 15, 1987. On April 15, 1987, further testimony was taken and the hearing concluded.

On April 8, 1988, Judge Fox entered an Order awarding

Dubin $2,550 in compensatory damages. Judge Fox did not award Dubin punitive damages, but did grant counsel leave to apply for attorneys' fees and costs, holding that such an award would adequately serve as a deterrent to future violations of the automatic stay. In the Opinion which accompanied the April 8, 1988 Order, Judge Fox found that Jakobowski was in civil contempt of the court because of his violation of the automatic stay provisions of Section 362 of the Code, 11 U.S.C. § 362. On April 15, 1988, Jakobowski filed a Notice of Appeal from the April 8, 1988 Order.

A motion for fees and costs, in the form of a fee application (the "Application"), was then filed with the court by Dubin's counsel. On September 8, 1988, after a hearing on the merits of the Application, Judge Fox filed a Memorandum and Order awarding $15,480 in fees and $261 in costs. Jakobowski then filed a Notice of Appeal of the September 8, 1988 Order, and thereafter filed a Motion for Stay Pending Appeal. On September 27, 1988, the District Court granted Defendant's Motion for Stay Pending Appeal and required Jakobowski to post a $20,000 bond, which bond was duly posted.

On January 27, 1989, Judge Fullam entered an Order affirming the consolidated Orders of Judge Fox that awarded damages, attorneys' fees and costs to Dubin. In an accompanying Memorandum, Judge Fullam concluded that Judge Fox had correctly determined that the Bankruptcy Court was authorized to issue a finding of civil contempt, and could award damages, fees and costs arising from that contempt. Although Judge Fullam found Jakobowski's appeal "frivolous", he declined to award fees and double costs to Dubin pursuant to Federal Rule of Appellate Procedure 38, reasoning that the Rules are only applicable to courts of appeals.

On June 29, 1989, the Court of Appeals for the Third Circuit issued a Memorandum Opinion afffrming the Order of the District

Court. The Court of Appeals held that the actions of Jakobowski "placed him in contempt of the automatic stay created by the filing of the Dubin bankruptcy petition" and that the Bankruptcy Court "has the legal authority to hold a person in civil contempt."

SUMMARY OF THE ARGUMENT

The Court should deny the Petition for a Writ of Certiorari for three reasons. First, despite Jakobowski's argument to the contrary, there is no conflict between Circuits, as the Courts of Appeals for both the Third and Ninth Circuits have held that in 1984 bankruptcy courts could hold a person in contempt and award sanctions for a violation of the automatic stay provisions of the Bankruptcy Code, 11 U.S.C. § 362. Second, bankruptcy courts have always had the authority to issue citations for contempt of court. Since the enactment of the Bankruptcy Reform Act of 1978, Pub. L. 95-598 (92 Stat. 2549), bankruptcy courts have had the inherent authority to issue orders which are necessary or appropriate to carry out the provisions of the Code. This authority extends to the imposition of sanctions for the willful refusal to comply with orders of a bankruptcy court dealing with violations of the automatic stay. In 1984, Congress enacted the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. (98 Stat. 333) which, *inter alia,* amended the automatic stay provisions of the Code, 11 U.S.C. § 362, but in doing so only clarified previous inherent authority by providing express authority for bankruptcy courts to enter orders imposing sanctions against any person found to have violated that section. Third and finally, in 1987 this Court approved an amendment to Bankruptcy Rule 9020 to provide express authority for bankruptcy courts to issue citations for contempt of court, thus rendering the issue raised by the petitioner as not sufficiently important for this Court to grant certiorari.

REASONS FOR DENYING THE WRIT

I.

There is no conflict between Circuits, since the decision of the Court of Appeals for the Third Circuit that a bankruptcy court had (in 1984) legal authority to hold a person in civil contempt for a violation of the automatic stay provisions of the Bankruptcy Code, 11 U.S.C. § 362, is consistent with the decisions of the Court of Appeals for the Ninth Circuit.

Jakobowski posits that the decision by the Court of Appeals for the Ninth Circuit in *Plastiras v. Idell (In re Sequoia Auto Brokers Ltd., Inc.)*, 827 F.2d 1281 (9th Cir. 1987) is in direct conflict with the June 29, 1989 decision of the Court of Appeals for the Third Circuit, thus requiring this Court to grant the Petition for a Writ of Certiorari to resolve a "conflict in the circuits". In his Petition, Jakobowski contends that the issue before the Court of Appeals for the Ninth Circuit was "whether a bankruptcy judge has jurisdiction to issue a civil contempt order." (*See* Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit at page 5.) However, Jakobowski has mischaracterized the issues which the Court of Appeals for the Ninth Circuit actually confronted in *Sequoia*. In fact, the decision in *Sequoia*, and other decisions from the Ninth Circuit, are not in conflict, and are indeed in harmony with the decision of the Court of Appeals for the Third Circuit at issue.

In *Sequoia, id.*, Ira P. Idell, the sole shareholder, officer, director, and manager of Sequoia Auto Brokers, Ltd., Inc. filed a voluntary personal bankruptcy petition. Subsequently, creditors filed an involuntary Chapter 7 petition against Sequoia. The Bankruptcy Court ordered Idell to file the corporate statement of affairs, schedules and master mailing list of creditors, as required by Section 521 of the Bankruptcy Code, 11 U.S.C. § 521.

Idell refused to comply with the court order by failing to appropriately respond to the questions included in the statement of affairs and schedules and by refusing to file a master mailing list. After issuing an order to show cause why he should not be held in contempt for failing to file the required documents, the Bankruptcy Court cited Idell for contempt and referred the matter to the District Court. The District Court remanded the matter back to the Bankruptcy Court to determine whether the Bankruptcy Court wished to impose criminal or civil contempt sanctions. The Bankruptcy Court found Idell in civil contempt, but since his financial condition did not permit the imposition of monetary sanctions, ordered him imprisoned until he complied with the court's order. On appeal, a different District Court judge held that Idell's answers to the statement of affairs and schedules were appropriate and reversed the contempt order. The Court of Appeals for the Ninth Circuit affirmed and, *in dicta*, opined as to the contempt authority of bankruptcy courts.

In the case at bar, the Bankruptcy Court held that Jakobowski violated the automatic stay provisions of the Bankruptcy Code, 11 U.S.C. § 362, and awarded damages based on 11 U.S.C. § 105. As originally promulgated in 1978, 11 U.S.C. § 105(a) provided:

> The Bankruptcy Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.

It is important to note that the statute violated in *Sequoia, id.*, was 11 U.S.C. § 521, while the statute violated in the instant case was the automatic stay provision of the Code, 11 U.S.C. § 362. This is crucial, as one month prior to their decision in *Sequoia, id.*, the Court of Appeals for the Ninth Circuit, in *Computer Communications, Inc. v. Codex Corporation, Inc. (In re Computer Communications, Inc.)*, 824 F.2d 725 (9th Cir. 1987), confronted the issue of whether the issuance of a citation for

contempt was appropriate for a violation of the provisions of the automatic stay of the Code (as opposed to other provisions of the Code). The Court of Appeals held that:

> [a] party who violates the automatic stay may be held in contempt and the court may award damages to compensate the other party for actual loss suffered . . . We hold that awarding damages to CCI for Codex's violation of the automatic stay was within the discretion of the bankruptcy court.

Computer Communications, 824 F.2d at 731.

The Court of Appeals for the Ninth Circuit itself has therefore already addressed the alleged "conflict" by reconciling its own opinions in this area and has reached the same conclusion as the Court of Appeals for the Third Circuit, when confronted with violations of the automatic stay provisions of the Code (as opposed to violations of other provisions of the Code).

Since that time, one court has had occasion to analyze and review the manner in which the Court of Appeals for the Ninth Circuit has harmonized its decisions. In a well reasoned opinion in *Wagner v. Piper Industries (In re Wagner),* 87 Bankr. 612 (Bankr. C.D. Cal. 1988), the Bankruptcy Court noted that the primary distinction in the two cases from the Court of Appeals for the Ninth Circuit was that in *Computer Communications,* 824 F.2d 725, the court was faced with a situation involving the imposition of sanctions for violation of the *automatic stay*, while in *Sequoia,* 827 F.2d 1281, the court was confronted with a situation which was subsequently dealt with by the 1987 amendment to Bankruptcy Rule 9020. *Wagner,* 87 Bankr. at 616.

Wagner, id., involved a cause of action based on 11 U.S.C. § 524 "the post-discharge analogue of Section 362." *Wagner,*

87 Bankr. 616. The Bankruptcy Court, in relying on the analysis of *Computer Communications,* 824 F.2d 725, held that there is "no reason to distinguish between Section 362 and Section 524; remedial damages are appropriate whenever a violation of either provision takes place." *Wagner,* 87 Bankr. at 617. Therefore, the bankruptcy courts in the Ninth Circuit are able to apply both cases without conflict.

Subsequently, the Court of Appeals for the Ninth Circuit, in *Gonzales v. Parks,* 830 F.2d 1033 (9th Cir. 1987), a case which was decided prior to the 1987 Amendments to Bankruptcy Rule 9020, *in dicta,* stated that a bankruptcy court does have the authority to impose sanctions if that authority is founded upon valid law. Since the authority to impose sanctions for a violation of 11 U.S.C. §§ 362 and 524 (as enacted in 1978) was granted by Congress when it allowed the statutes to become law, the opinions by the Court of Appeals for the Ninth Circuit in *Sequoia,* 827 F.2d 1281 and *Computer Communications,* 824 F.2d 725 are in accord and there is no conflict either with the Court of Appeals for the Third Circuit or within the Court of Appeals for the Ninth Circuit.

In 1984, 11 U.S.C. § 362 was amended by the addition of subsection (h), which states:

> An individual injured by any willful violation of a stay provided by this section *shall* recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages. (Emphasis added.)

11 U.S.C. § 362(h). Even though the reasons for the statutory addition have not been stated it is clear that the award of damages is now mandatory. 2 *Collier on Bankruptcy,* ¶ 362.12 (15th Ed. 1989).

In addition to the foregoing, the nature of the contempt citations issued in *Sequoia,* 827 F.2d 1281, and the instant case are dissimilar. Even though both contempt citations were labeled "civil", the contempt order entered by the Bankruptcy Court in *Sequoia,* 827 F.2d 1281, was, in actuality, criminal. As noted by the Court of Appeals for the Ninth Circuit, "[c]ivil contempt is a refusal to do an act the court has ordered for the benefit of a party; the sentence is punitive to vindicate the authority of the court." *Sequoia,* 827 F.2d at 1283, n.1 [*citing Gompers v. Bucks Stove & Range Company,* 221 U.S. 418, 441 (1911)]. Civil contempt is employed to coerce a person into compliance with the court's order and to compensate for losses sustained. *McDonald's Corp. v. Victory Investments,* 727 F.2d 83 (3d Cir. 1984). *See also, United States v. United Mine Workers of America,* 330 U.S. 258 (1947). In *Sequoia,*827 F.2d 1281, the contemnor, Idell, was incarcerated. Notwithstanding calling the contempt civil, since the debtor could not be "compensated for losses sustained", it was, in reality, criminal. Criminal contempt involves an entirely distinct analysis which is inapplicable to the case at bar. A criminal contempt sanction is necessary only to vindicate the dignity of a bankruptcy court and thus not an order to effectuate the provisions of the Code. *Tele-Wire Supply Corp. v. Presidential Financial Corporation, Inc. (In re Industrial Tool Distributors, Inc.),* 55 Bankr. 746, 750 (Bankr. N.D. Ga. 1985). Therefore, even if *Gonzales,* 830 F.2d 1033, and the analysis of the authority based on the different sections of the Code are discounted, *Plastiras v. Idell (In re Sequoia Auto Brokers Ltd., Inc.),* 824 F.2d 1281 (9th Cir. 1987) may be construed as correctly decided and not in conflict with the Third Circuit.

Jakobowski requests that this Court grant his Petition for a Writ of Certiorari based upon his argument that there exists a conflict between the Courts of Appeals for the Third and Ninth Circuits. For a conflict to exist, it must be a real conflict on the same matter of law, not merely an inconsistency *in dicta.* This

Court on occasion has dismissed a Writ of Certiorari as improvidently granted where subsequent examination reveals that the alleged conflict giving rise to the grant does not in fact exist. *Layne & Bowler Corp. v. Western Wall Works,* 261 U.S. 387, 392-393 (1923). As set forth above, even, *arguendo,* if it appears a conflict exists, the analysis by the Court of Appeals for the Ninth Circuit of the contempt power of a bankruptcy court was *dicta*. Therefore, no conflict exists.

If a true conflict exists between the Courts of Appeals for the Third and Ninth Circuits, a petition for a writ of certiorari may be denied "when it seems likely that the conflict may be resolved as a result of future cases in the Courts of Appeals, or where the impact of the conflict is narrowly confined and is not apt to have continuing future consequences . . . " *See* Mr. Justice Harlan, *Some Aspects of the Judicial Process in the Supreme Court of the United States,* 33 Australian L.J. 108 (1959). Additionally, if the statute upon which the controversy rests has been amended in a manner which will prevent the problem from arising in the future, certiorari may be denied despite a square conflict. *See e.g., United States v. Abrams,* 344 U.S. 855 (1952). As discussed above, the 1984 enactment of 11 U.S.C. § 362(h) has clearly granted to bankruptcy courts both the authority and the duty to award damages for a violation of the automatic stay provisions of the Code, 11 U.S.C. § 362. As will be set forth with greater specificity below, the passage of the 1987 Amendments to Bankruptcy Rule 9020, which expressly provides for contempt proceedings, has vitiated the import of *Plastiras v. Idell (In re Sequoia Auto Brokers Ltd., Inc.),* 827 F.2d 1281 (9th Cir. 1987).

It is clear that not only does *no* conflict exist between the Courts of Appeals for the Third and Ninth Circuits, but that the two Circuits reached the *same* conclusion on the authority of bankruptcy courts to issue contempt citations for violations of the automatic stay provisions of the Code, 11 U.S.C. § 362. As

a result of the 1984 enactment of 11 U.S.C. § 362(h), bankruptcy courts are required to award damages for a violation of the automatic stay provisions of the Code, 11 U.S.C. § 362. Finally, even if a conflict did exist, subsequent legislation (the 1987 Amendment to Bankruptcy Rule 9020) has determined that bankruptcy courts have the power to issue contempt citations.

II.

The Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. 98-353 (98 Stat. 333) merely more carefully defined the inherent authority of a bankruptcy court to issue citations of contempt for violations of court orders.

In *Plastiras v. Idell (In re Sequoia Auto Brokers Ltd., Inc.),* 827 F.2d 1281 (9th Cir. 1987), the Court of Appeals for the Ninth Circuit concluded that since the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. 98-353 (98 Stat. 333) ("BAFJA") did not include any specific reference dealing with the civil or criminal contempt power of a bankruptcy judge, that none exists. Such analysis misstates the effect of the BAFJA.

The subject of contempt was expressly dealt with by Section 41 of the Bankruptcy Act of 1898, Ch. 541 (30 Stat. 544), 11 U.S.C. § 69 (repealed 1978), entitled "Contempts Before Referees". Under the Bankruptcy Act of 1898, the referee in bankruptcy had no power to either hold a party guilty or provide punishment for being in contempt of court.

In 1973, this Court, pursuant to its rule making power, approved the final draft prepared by the Advisory Committee on Bankruptcy Rules and submitted the same to Congress as required by the enabling statute. The Bankruptcy Rules changed the title from "referee in bankruptcy" to "bankruptcy judge" and contained a new rule which, for the first time, dealt directly

with the subject of contempt committed in connection with a bankruptcy case referred to the bankruptcy judge. Bankruptcy Rule 920 expressly recognized the power of a bankruptcy judge to cite and punish for civil contempt, with the limitation that the fine imposed could not exceed $250 and that the bankruptcy judge had no power to order imprisonment of one found to be in contempt. According to the notes of the Advisory Committee the rule was merely a recognition of the inherent power of a court of competent jurisdiction to enforce its own orders and to punish for disobedience of a lawful order for contempt. Therefore, a bankruptcy judge had the power to issue a contempt citation with the aforementioned limitations.

The Bankruptcy Reform Act of 1978, Pub. L. No. 50-598 (92 Stat. 2549), completely reconstructed the bankruptcy system. As part of this legislation, Congress enacted 28 U.S.C. § 1481 (1978) which granted the newly constructed bankruptcy courts with the powers of a court of equity, law, and admiralty. This section only dealt with the subject of contempt by way of limitation by providing that a bankruptcy court was not authorized to punish for criminal contempt that was not committed in the presence of the bankruptcy judge or warranted a punishment of imprisonment. Once again, the inherent authority to issue a contempt citation was limited, but not eliminated.

In 1982, this Court issued its decision in *Northern Pipeline Construction Company v. Marathon Pipeline Company*, 458 U.S. 50 (1982), which invalidated the jurisdictional grant by the Bankruptcy Reform Act of 1978. 28 U.S.C. § 1471, *et seq.* (1978). This Court held that 28 U.S.C. § 1471, because it permitted the bringing of a party involuntarily into a bankruptcy court to decide a question of state law, was unconstitutional. This Court did not construe the Constitution as prohibiting Congress from vesting sufficient authority in Article I bankruptcy courts for them to

perform their essential functions. As set forth in the pluarality opinion:

> when Congress creates a statutory right, it clearly has the discretion, in defining that right, to create presumptions, or assign burdens of proof, or prescribe remedies; it may also provide that persons seeking to vindicate that right must do so before particularized tribunals created to perform the specialized adjudicative tasks related to that right. Such provisions do, in a sense, affect the exercise of judicial power, but they are also incidental to Congress' power to define the right that it has created.

Northern Pipeline, 458 U.S. at 83.

The concurring opinion emphasized that the holding was restricted to the unconstitutionality of the jurisdictional grant to the bankruptcy judge of the power to adjudicate claims or causes of action based upon state law.

Additionally, the concurrence saw no need to decide the constitutionality of the jurisdictional grant of other Article III judicial powers. Accordingly, both the plurality and concurrence agreed that adjudication of causes of action based upon state law was a judicial power and that under the constitutional grant, that judicial power could only be exercised by an Article III court.

In the case at bar, the issue is whether a debtor has a right to have his affairs fully determined in a bankruptcy court. This is a federal right explicity recognized by the United States Constitution, Article I, Section 8, Clause 4. Determining whether civil contempt has been committed involves only considerations of whether the party knew about a lawful order and whether there

was compliance. Since that determination does not involve private rights under non bankruptcy law and does not offend the Constitition, it is not violative of the holding in *Northern Pipeline Construction Company v. Marathon Pipeline Company*, 458 U.S. 50 (1982).

III.

Any conflict which may, *arguendo*, have existed has been rendered moot by the 1987 Amendments to Bankruptcy Rule 9020.

At the time the causes of action in both this case and *Plastiras v. Idell (In re Sequoia Auto Brokers Ltd., Inc.)*, 827 F.2d 1281 (9th Cir. 1987) arose, Bankruptcy Rule 9020 provided a mechanism for bankruptcy courts to impose sanctions for criminal contempt only. The Rule limited a bankruptcy court's inherent authority to order "*[c]riminal* contempt which may be punished by a bankruptcy judge acting pursuant to 28 U.S.C. § 1481 . . . " (emphasis supplied). If it appeared to the bankruptcy court that the criminal contempt occurred but was outside the scope of the bankruptcy court's power under 28 U.S.C. § 1481, the bankruptcy judge could "certify the facts to the district court."

In 1987, this Court approved an amendment to Bankruptcy Rule 9020. The Rule was retitled "Contempt Proceedings" and now states, in pertinent part:

> (b) Other Contempt. Contempt committed in a case or proceeding pending before a bankruptcy judge, except when determined as provided in Subdivision (a) of this Rule, may be determined by a bankruptcy judge only after a hearing on notice. The notice shall be in writing, shall state the essential facts constituting the contempt charged and describe the contempt as criminal or

> civil and shall state the time and place of hearing, allowing a reasonable time for preparation of the defense . . .
>
> (c) Service and Effective Date of Order; Review. The clerk shall serve forthwith a copy of the order of contempt on the entity named therein. The order shall be effective ten days after service of the order and shall have the same force and effect as an order of contempt entered by the district court unless, within a ten day period, the entity therein serves and files with the clerk objections prepared in the manner provided in Rule 9033(b). If timely objections are filed, the order shall be reviewed as provided in Rule 9033(b).

The 1987 Advisory Committee Note to Rule 9020 states that:

> sound judicial administration requires that the initial determination of whether contempt has been committed should be made by the bankruptcy judge. If timely objections are not filed to the bankruptcy judge's order, the order has the same force and effect as an order of the district court. If objections are filed within ten days of service of the order, the district court conducts a *de novo* review pursuant to Rule 9033 and any order of contempt is entered by the district court upon completion of the court's review of the bankruptcy judge's order.

Bankruptcy Rule 9020 (Amended 1987), Advisory Committee Note.

It is therefore evident that currently a bankruptcy court has

the authority to issue citations for contempt, with certain limited restrictions imposed upon their authority to issue citations for criminal contempt. If there ever existed a conflict between the Courts of Appeals for the Third and Ninth Circuits, this Court, by the approval of the Amendment to Bankruptcy Rule 9020, has eliminated such a conflict. As a result any potential conflict no longer exists and the Petition for a Writ of Certiorari should be denied.

CONCLUSION

Jakobowski has utilized the judicial process to the detriment of Dubin. His travels have taken him from the Philadelphia County Court of Common Pleas through the federal judiciary and he now finds himself on the doorstep of this Court. He has evidenced an absolute disregard for the judicial process and, now, seeks to invoke this Court's jurisdiction on a matter where there exists no conflict and alternatively has been rendered moot by Congress. For the foregoing reasons, it is respectfully requested that this Court deny the Petition for Writ of Certiorari and award respondent appropriate costs.

Respectfully submitted,

STEVEN D. USDIN
Counsel of Record
ROBERT M. BOVARNICK
ADELMAN LAVINE GOLD
AND LEVIN
Attorneys for Respondent

APPENDIX A — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA DATED FEBRUARY 8, 1985

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION
NO. 84-3022

BARRY A. DUBIN,

Appellee

v.

FRANK A. JAKOBOWSKI, ESQ.,

Appellant

MEMORANDUM AND ORDER

FULLAM, J. FEBRUARY 8, 1985

This is an appeal from a bankruptcy judge's Order, entered April 26, 1984, directing the appellant, an attorney, to take immediate steps to dissolve an attachment of a bank account of the debtor.

The appellant, Frank M. Jakobowski, is attorney for Robert Wolk, trading as Wolk Dental Laboratory, a creditor of the debtor, who is a dentist named Barry A. Dubin. Before bankruptcy, Wolk, with Jakobowski's assistance, had obtained a judgment against the debtor, in the Court of Common Pleas of Philadelphia County (No. 1095 February Term 1982). On April

20, 1983, Dr. Dubin filed a petition in bankruptcy. The Wolk judgment was listed in the debtor's Amended Statement of Affairs but was inadvertently omitted from the A-3 schedule.

On January 23, 1984, notwithstanding the pending bankruptcy proceeding with its automatic stay, Jakobowski, on behalf of Wolk, issued execution on the judgment, and attached a bank account maintained by Dubin at Girard Bank. On January 30, 1984, counsel for the debtor formally notified Jakobowski's office of the pending bankruptcy proceeding and the automatic stay, and requested that the attachment be dissolved. The request was not complied with.

Counsel for the debtor thereupon filed a motion for an adjudication of contempt against Wolk. A hearing on this application was held on February 27, 1984. Wolk appeared at that hearing, unrepresented by counsel. The bankruptcy judge entered an order directing that Wolk be held in contempt, subject to a fine for each and every day beyond March 2, 1984, that the attachment remained in effect. The bankruptcy judge also ordered Wolk to direct his counsel, Jakobowski, to dissolve the writ of execution.

By letter dated March 1, 1984, Wolk informed the bankruptcy judge that he had directed Jakobowski to cause the attachment to be dissolved, but that Jakobowski refused to comply with that request.

The debtor thereupon brought an adversary proceeding against Jakobowski, by filing a complaint for injunctive and other relief on March 28, 1984. On March 30, 1984, the debtor filed a motion for preliminary injunction. A hearing on that motion was held April 26, 1984. The hearing was held on that date,

although Jakobowski did not appear. At the conclusion of the hearing, and after having waited a suitable interval for Jakobowski to appear, the bankruptcy judge entered the Order appealed from. Eventually, upon posting of a bond, the Order was stayed pending the outcome of this appeal.

Appellant Jakobowski makes several arguments, none of which has even colorable merit. It is first contended that the Order appealed from is not supported by substantial evidence in the record because, at least according to appellant's original assertions, there was no evidentiary hearing preceding it. This is simply incorrect: the bankruptcy judge did hold a hearing, and heard evidence which adequately supports the Order entered.

It is further contended that the Order represents a violation of appellant's right to due process of law, because it was entered after a hearing held in his absence. The record discloses that when the original contempt citation was sought against Wolk, neither Mr. Jakobowski nor Mr. Wolk appeared at the scheduled hearing. The hearing was then adjourned, and counsel for the debtor subpoenaed Mr. Wolk, and thus obtained his attendance; Mr. Jakobowski did not appear. When the adversary proceeding against Mr. Jakobowski was scheduled for hearing, Mr. Jakobowski apparently sent word to the bankruptcy judge's staff that he would be one-half hour late, would be unable to arrive until 10:45 a.m., and therefore requested that the matter be placed at the end of that day's list. This was done. The end of the list was reached shortly after noon, but Mr. Jakobowski still had not appeared, nor had he sent any further word. In these circumstances, the due process argument rings hollow indeed. Moreover, Mr. Jakobowski did not seek reconsideration of the Order on that (or any other) ground, but instead filed an immediate appeal.

Appendix A

Appellant's remaining arguments reflect a total misunderstanding of bankruptcy law and procedures. Whether or not the Wolk debt is dischargeable in the Dubin bankruptcy has no bearing upon Wolk's, and appellant's, obligations to recognize the automatic stay, and to comply with orders of the bankruptcy judge. The bankruptcy judge had jurisdiction to enter the contempt order against Wolk; this was a "core" proceeding, not a "related" matter. The Court of Common Pleas of Philadelphia County is not the appropriate tribunal for the present dispute. Finally, although irrelevant to the present proceeding, the dischargeability of the Wolk debt is not affected by the inadvertent failure to list it on the A-3 schedule. Wolk was aware of the bankruptcy, the debtor was aware of the debt, and Wolk had (and still has) ample opportunity to file a proof of claim.

The Order appealed from will therefore be affirmed.

Appendix A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION
NO. 84-3022

BARRY A. DUBIN,

Appellee

v.

FRANK A. JAKOBOWSKI, ESQ.,

Appellant

ORDER

AND NOW, this 8th day of February, 1985, it is ORDERED that the April 26, 1984 Order granting injunctive relief against the defendant/appellant Frank A. Jakobowski, Esq. (correctly designated as Frank M. Jakobowski, Esq.) is AFFIRMED.

s/ John P. Fullam
J.

ENTERED: Filed February 12, 1985

APPENDIX B — RELEVANT STATUTES

BANKRUPTCY CODE

SECTION 362 (11 U.S.C. § 362)

§ 362 Automatic stay.

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(a)(3)), operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning the debtor.

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(a)(3)), does not operate as a stay—

(1) under subsection (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor;

(2) under subsection (a) of this section, of the collection of alimony, maintenance, or support from property that is not property of the estate;

(3) under subsection (a) of this section, of any act to perfect an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546(b) of this title;

(4) under subsection (a)(1) of this section, of the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;

(5) under subsection (a)(2) of this section, of the enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;

(6) under subsection (a) of this section, of the setoff by a commodity broker, forward contract merchant, stockbroker, or securities clearing agency of any mutual debt and claim under or in connection with commodity contracts, as defined in section 761(4) of this title, forward contracts, or securities contracts, as defined in section 741(7) of this title, that constitutes the setoff of a claim against the debtor for a margin payment, as defined in section 741(5) or 761(15) of this title, or settlement payment, as defined in section 741(8) of this title, arising out

of commodity contracts, forward contracts, or securities contracts against cash, securities, or other property held by such commodity broker, forward contract merchant, stockbroker, or securities clearing agency to margin, guarantee, or secure commodity contracts, forward contracts, or securities contracts;

(7) under subsection (a) of this section, of the commencement of any action by the Secretary of Housing and Urban Development to foreclose a mortgage or deed of trust in any case in which the mortgage or deed of trust held by said Secretary is insured or was formerly insured under the National Housing Act and covers property, or combinations of property, consisting of five or more living units; or

(8) under subsection (a) of this section, of the issuance to the debtor by a governmental unit of a notice of tax deficiency.

(c) Except as provided in subsections (d), (e), and (f) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate; and

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) the time the case is dismissed; and

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, or 13 of this title, the time a discharge is granted or denied.

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest; or

(2) with respect to a stay of an act against property, if—

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization.

(e) Thirty days after a request under subsection (d) of this section for relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the court, after notice and a hearing, orders such stay continued in effect pending, or as a result of, a final hearing and determination under subsection (d) of this section. A hearing under this subsection may be a preliminary hearing, or may be consolidated with the final hearing under subsection (d) of this section. If the hearing under this subsection is a preliminary hearing—

(1) the court shall order such stay so continued if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the final hearing under subsection (d) of this section; and

(2) such final hearing shall be commenced within thirty days after such preliminary hearing.

(f) The court, without a hearing, shall grant such relief from the stay provided under subsection (a) of this section as is necessary to prevent irreparable damage to the interest of an entity in property, if such interest will suffer such damage before there is an opportunity for notice and a hearing under subsection (d) or (e) of this section.

(g) In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section—

Appendix B

(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and

(2) the party opposing such relief has the burden of proof on all other issues.

Appendix B

BANKRUPTCY CODE

SECTION 362 (11 U.S.C. § 362)

§ 362. **Automatic stay.**

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(a)(3)), operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning the debtor.

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(a)(3)), does not operate as a stay—

(1) under subsection (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor;

(2) under subsection (a) of this section, of the collection of alimony, maintenance, or support from property that is not property of the estate;

(3) under subsection (a) of this section, of any act to perfect an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546(b) of this title or to the extent that such act is accomplished within the period provided under section 547(e)(2)(A) of this title;

(4) under subsection (a)(1) of this section, of the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;

(5) under subsection (a)(2) of this section, of the enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;

(6) under subsection (a) of this section, of the setoff by a commodity broker, forward contract merchant, stock-

broker, financial institutions, or securities clearing agency of any mutual debt and claim under or in connection with commodity contracts, as defined in section 761(4) of this title, forward contracts, or securities contracts, as defined in section 741(7) of this title, that constitutes the setoff of a claim against the debtor for a margin payment, as defined in section 741(5) or 761(15) of this title, or settlement payment, as defined in section 741(8) of this title, arising out of commodity contracts, forward contracts, or securities contracts against cash, securities, or other property held by or due from such commodity broker, forward contract merchant, stockbroker, financial institutions, or securities clearing agency to margin, guarantee, secure, or settle commodity contracts, forward contracts, or securities contracts;

(7) under subsection (a) of this section, of the setoff by a repo participant, of any mutual debt and claim under or in connection with repurchase agreements that constitutes the setoff of a claim against the debtor for a margin payment, as defined in section 741(5) or 761(15) of this title, or settlement payment, as defined in section 741(8) of this title, arising out of repurchase agreements against cash, securities, or other property held by or due from such repo participant to margin, guarantee, secure or settle repurchase agreements;

(8) under subsection (a) of this section, of the commencement of any action by the Secretary of Housing and Urban Development to foreclose a mortgage or deed of trust in any case in which the mortgage or deed of trust held by the Secretary is insured or was formerly insured under the National Housing Act and covers property, or combinations of property, consisting of five or more living units;

(9) under subsection (a) of this section, of the issuance to the debtor by a governmental unit of a notice of tax deficiency;

(10) under subsection (a) of this section, of any act by a lessor to the debtor under a lease of nonresidential real property that has terminated by the expiration of the stated term of the lease before the commencement of or during a case under this title to obtain possession of such property; or [*sic*]

(11) under subsection (a) of this section, of the presentment of a negotiable instrument and the giving of notice of and protesting dishonor of such an instrument;

(12)* under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Transportation under the Ship Mortgage Act, 1920 (46 App. U.S.C. 911 et seq.) (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage, or a security interest in or relating to a vessel or vessel under construction, held by the Secretary of Transportation under section 207 or title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1117 and 1271 et seq., respectively), or under applicable State law; or

(13)* under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the en-

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* [*Ed. Note:* Paragraphs (12) and (13) were added to 11 U.S.C. § 362(b) by § 5001 of the Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509 (1986). Section 5001(b) of Pub. L. No. 99-509 provides:

(Cont'd)

try of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Commerce under the Ship Mortgage Act, 1920 (46 App. U.S.C. 911 et seq.) (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage in a vessel or a mortgage, deed of trust, or other security interest in a fishing facility held by the the Secretary of Commerce under section 207 or title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1117 and 1271 et seq. respectively).

(c) Except as provided in subsections (d), (e), and (f) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate; and

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) the time the case is dismissed; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied.

(d) On request of a party in interest and after notice and a

(Cont'd)

"the amendments made by subsection (a) of this section shall apply only to petitions filed under section 362 of this title 11, United States Code, which are made after August 1, 1986."

This is inaccurate. "Petitions" are not made under § 362. The proper reference probably should be to "requests" made pursuant to § 362(d). If "petitions" were intended, then the reference should be to "cases commenced."

Section 5001(a) also provides that its provisions apply only to title 11 cases commenced before December 31, 1989.]

hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest; or

(2) with respect to a stay of an act against property under subsection (a) of this section, if—

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization.

(e) Thirty days after a request under subsection (d) of this section for relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the court, after notice and a hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination under subsection (d) of this section. A hearing under this subsection may be a preliminary hearing, or may be consolidated with the final hearing under subsection (d) of this section. The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (d) of this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing. If the hearing under this subsection is a preliminary hearing, then such final hearing shall be commenced not later than thirty days after the conclusion of such preliminary hearing.

(f) Upon request of a party in interest, the court, with or without a hearing, shall grant such relief from the stay provided under subsection (a) of this section as is necessary to prevent irreparable damage to the interest of an entity in property, if such interest will suffer such damage before there

is an opportunity for notice and a hearing under subsection (d) or (e) of this section.

(g) In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section—

(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and

(2) the party opposing such relief has the burden of proof on all other issues.

(h) An individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

Appendix B

RULES OF BANKRUPTCY PROCEDURE

Rule 9020.

CRIMINAL CONTEMPT PROCEEDINGS

(*a*) *Procedure.*

(*1*) *Summary Disposition.* Criminal contempt which may be punished by a bankruptcy judge acting pursuant to 28 U.S.C. § 1481 may be punished summarily by a bankruptcy judge if he saw or heard the conduct constituting the contempt and if it was committed in his actual presence. The order of contempt shall recite the facts and shall be signed by the judge and entered of record.

(*2*) *Disposition After a Hearing.* Criminal contempt which may be punished by a bankruptcy judge acting pursuant to 28 U.S.C. § 1481, except when determined as provided in paragraph (1) of this subdivision, may be punished by the bankruptcy judge only after a hearing on notice. The notice shall be in writing, shall state the essential facts constituting the criminal contempt charged and describe the contempt as criminal and shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense. The notice may be given on the court's own initiative or on application of the United States attorney or by an attorney appointed by the court for that purpose. If the contempt charged involves disrespect to or criticism of a bankruptcy judge, that judge is disqualified from presiding at the hearing except with the consent of the person charged.

(*3*) *Certification to District Court.* If it appears to a bankruptcy judge that criminal contempt has occurred but the court is without power under 28 U.S.C. § 1481, to punish or to impose the appropriate punishment for the criminal contempt the judge may certify the facts to the district court.

Appendix B

(*b*) ***Right to Jury Trial.*** Nothing in this rule shall be construed to impair the right to jury trial whenever it otherwise exists.

Appendix B

Rule 9020.

CONTEMPT PROCEEDINGS

(*a*) *Contempt Committed in Presence of Bankruptcy Judge.* Contempt committed in the presence of a bankruptcy judge may be determined summarily by a bankruptcy judge. The order of contempt shall recite the facts and shall be signed by the bankruptcy judge and entered of record.

(*b*) *Other Contempt.* Contempt committed in a case or proceeding pending before a bankruptcy judge, except when determined as provided in subdivision (a) of this rule, may be determined by the bankruptcy judge only after a hearing on notice. The notice shall be in writing, shall state the essential facts constituting the contempt charged and describe the contempt as criminal or civil and shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense. The notice may be given on the court's own initiative or on application of the United States attorney or by an attorney appointed by the court for that purpose. If the contempt charged involves disrespect to or criticism of a bankruptcy judge, that judge is disqualified from presiding at the hearing except with the consent of the person charged.

(*c*) *Service and Effective Date of Order; Review.* The clerk shall serve forthwith a copy of the order of contempt on the entity named therein. The order shall be effective 10 days after service of the order and shall have the same force and effect as an order of contempt entered by the district court unless, within the 10 day period, the entity named therein serves and files with the clerk objections prepared in the manner provided in Rule 9033(b). If timely objections are filed, the order shall be reviewed as provided in Rule 9033.

(*d*) *Right to Jury Trial.* Nothing in this rule shall be construed to impair the right to jury trial whenever it otherwise exists.